

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

MORRIS BIVINGS, on behalf of	)	
himself and others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 1:12-cv-03591-CAP
	)	
EURAMEX MANAGEMENT	)	
GROUP, LLC; WESLEY	)	
APARTMENT HOMES GROUP, LLC;	)	
IGNACIO DIEGO; and JAMIN	)	
HARKNESS,	)	
	)	
Defendants.	)	

**DEFENDANTS’ MOTION FOR LEAVE TO FILE  
SUR-REPLY BRIEF IN OPPOSITION TO  
PLAINTIFF’S MOTION FOR CONDITIONAL CERTIFICATION**

Defendants Euramex Management Group, LLC; Wesley Apartment Homes Group, LLC; Ignacio Diego; and Jamin Harkness (collectively “Defendants”), by and through undersigned counsel, hereby file the foregoing Motion for Leave to File Sur-Reply in Opposition to Plaintiff Morris Biving’s Motion For Conditional Certification of Collective Action and Issuance of Court Approved Notice to Collective Action Members, Dkt. No. 19. Defendants’ proposed Sur-Reply Brief is attached hereto as Exhibit A.

The primary purpose of Defendants' Sur-Reply Brief is to address the newly placed emphasis on "comp-time" in Plaintiff's Reply Brief in Support of Motion for Conditional Certification, Dkt. No. 29. While Plaintiff's underlying Memorandum of Law in Support of his Motion for Conditional Certification used the phrase "comp-time" just once in twenty (20) pages, Plaintiff now claims that an alleged "comp-time" policy (which does not exist) is the "crux" of his claims. (See Plaintiff's Memorandum of Law in Support of Motion for Conditional Certification, Dkt. No. 19-1, p. 13; Plaintiff's Reply in Support of Motion for Conditional Certification, Dkt. No. 29, p. 3.) In doing so, Plaintiff mischaracterizes Euramex's actual policies and disregards on-point case law in the Northern District of Georgia stating that policies such as Euramex's do not provide an adequate basis to grant conditional certification. Euramex therefore respectfully requests leave of the Court to file the attached Sur-Reply Brief to address the factually inaccurate and legally insufficient arguments made regarding "comp-time" in Plaintiff's Reply Brief.

Respectfully submitted, this 11<sup>th</sup> day of March, 2013.

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APARTMENT HOMES, LLC;  
IGNACIO DIEGO; and JAMIN  
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IGNACIO DIEGO; and JAMIN	)	
HARKNESS,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of March, 2013, I electronically filed the foregoing **DEFENDANTS' MOTION FOR LEAVE TO FILE SUR-REPLY BRIEF** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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/s/ Matthew R. Simpson